



Guidelines:

Partnership Proposals

2017

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Further Document Information and Relationships

List here the related strategies, procedures, references, policy or other documents that have a bearing on this Procedure and that may be useful reference material for users of this Procedure.

Related Legislation*	Local Government Act 1993 and associated Regulations Local Government (Amendment) Act 2004 Crown Lands Act
Related Policies	Supporting Partnerships Policy Procurement and Purchasing Policy Business Ethics Policy Byron Shire Council Code of Conduct
Related Procedures/ Protocols, Statements, documents	Guidelines in the Procedures and Processes to be followed by Local Government in Public-Private Partnerships, NSW Department of Local Government http://www.olg.nsw.gov.au/sites/default/files/05-51.pdf Guidelines on Direct Negotiations, The Independent Commission Against Corruption http://www.icac.nsw.gov.au/docman/preventing-corruption/cp-publications-guidelines/1299-direct-negotiations-guidelines-for-managing-risks-in-direct-negotiations/file

**Note: Any reference to Legislation will be updated in the Procedure as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.*

TABLE OF CONTENTS

1	INTRODUCTION.....	2
2	AUDIENCE	2
3	OBJECTIVES	2
4	SCOPE.....	2
5	DEFINITIONS	2
6	COUNCIL PROCUREMENT.....	3
6.1	Procurement Principles.....	3
6.2	Unsolicited Proposals	5
6.3	Requirement for Competitive Processes	5
6.4	Approval Requirements	5
6.5	Assessment Process and Criteria.....	6
6.6	Keeping the Community Informed	6
7	GUIDING PRINCIPLES OF SUBMITTING PROPOSALS	6
7.1	Optimise Outcomes	6
7.2	Uniqueness of Proposals.....	6
8	PROTECTION OF INTELLECTUAL PROPERTY AND COMMERCIAL IN CONFIDENCE INFORMATION	8
9	SUBMITTING AND ASSESSING UNSOLICITED PROPOSALS	8
9.1	Submitting an Unsolicited Proposal	8
9.2	Assessing an Unsolicited Proposal.....	9
9.2.1	Value	9
9.2.2	Assessment Criteria	9
9.3	Determination of Outcome	11
9.4	Notification of Outcome	11
10	OPEN MARKET REQUESTS FOR PROPOSAL.....	11
10.1	Formation of Project Team	11
10.2	Design of Open Market Process.....	11
10.3	Conduct of the Open Market Process	12
10.4	Contract Execution	12
11	FLOWCHART OF KEY STAGES IN THE CONSIDERATION OF PROPOSALS	13

1 Introduction

Delivering better services for the community is a key priority for Byron Shire Council. Council recognises that, when it comes to tackling our most pressing issues, it may not be able to solve them alone. Byron Shire Council aims to foster collaboration and develop partnerships with the private and non-government sectors to harness the innovation and capital available to deliver better outcomes for the community.

Council has adopted a Supporting Partnerships Policy, confirming its commitment to encouraging innovative partnerships with the private and non-government sector to achieve positive social, environmental, and economic outcomes, whilst also achieving positive financial and governance outcomes for Council.

All partnerships between Council and the non-government sector shall be consistent with Council's Community Strategic Plan which sets out the Byron Shire community's main priorities and aspirations.

In order to provide services to the community, Council procures products and services by two broad means:

1. Solicited Proposals – Council initiated procurement whereby Council requests proposals from the open market.
2. Unsolicited Proposals – Proposals submitted by a proponent whereby Council has not requested proposals but a proponent has an idea they want to “pitch” to Council.

These Guidelines set out the processes to be followed by proponents and Council when submitting and assessing proposals.

2 Audience

The intended audience for this document are proponents who may wish to submit a proposal to Council, the general community and stakeholders external to Council.

3 Objectives

These Guidelines outline a transparent and streamlined process to facilitate Council, non-government sectors and the community working well together to develop and deliver innovative ideas, services and new infrastructure in a timely and efficient manner.

The key objectives of these Guidelines are to:

1. Provide transparency and accountability;
2. Provide consistency and certainty to proponents seeking to deal with Council;
3. Set out the key steps for assessing proposals;
4. Set out the information that will be made available to the community about proposals.

4 Scope

These Guidelines apply to all solicited and unsolicited proposals for partnerships and to all areas of Council.

5 Definitions

Unsolicited Proposal	Any approach to Council from a Proponent with a proposal to deal directly with Council with regard to a social, environmental or economic proposition, where Council has not requested the proposal. This may include, without limitation, proposals to build and/or finance infrastructure, provide goods or services or use public land or assets.
Solicited Proposal	A proposal submitted by a proponent in response to a formal written request from Council to develop a partnership.
Non-Government Sector	Any individual, company, joint venture, consortium, or non-government organisation.
Proponent	Any non-government entity seeking to do business with Council.

6 Council Procurement

6.1 Procurement Principles

Council is required to abide by the following principles when partnering with other organisations to deliver goods, works or services.

Legal Obligations

Council must abide by all applicable legislation including the NSW Local Government Act 2003, Local Government Amendment (Public Private Partnerships Act 2004), and associated Regulations.

Policies and Guidelines

Council must comply with its own policies and guidelines.

Value for Money

Obtaining value for money for the life cycle of the goods/services is the essential test against which any procurement outcome must be justified. This is achieved by fostering an environment in which proponents can put forward innovative proposals with the confidence they will be assessed on their merits and where Council appropriately considers overall value for money.

Probity

Council seeks to conduct its dealing with integrity. The assessment of proposals must be fair and open and demonstrate the highest level of probity consistent with the public interest. The receipt and assessment of proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision making processes.

Where any proposal is assessed as having a high or extreme level of risk in accordance with Council's Hazard and Risk Management Procedure, a probity advisor will be engaged to guide the development and implementation of the open market request for proposals process.

Consistency

Fair and impartial treatment will be a feature of each stage of the assessment process. All procurement conditions must be the same for all proponents for any particular requirement. This includes all criteria and evaluation of submissions. The evaluation must be based on the published criteria.

Conflicts of Interest

In support of the public interest, transparency and accountability, Byron Shire Council requires the identification, management and monitoring of conflicts of interest consistent with Council's Code of Conduct, Business Ethics Policy, and Local Government Act.

As defined in the Code of Conduct, a conflict of interest exists where a reasonable and informed person would perceive that public duties could be influenced by private interests.

Proponents are required to disclose any current, past or possible future relationships or connections that could unfairly influence or be seen to unfairly influence the integrity of any stage in the process.

Council staff are also required to disclose any conflicts of interest in accordance with Council's Code of Conduct. Council will ensure that there is a clearly defined separation of duties and personnel between the assessment of proposals and any Council approved functions.

Proponents are encouraged to disclose any actual, potential or perceived conflict of interest promptly in a timely manner. Disclosure of conflicts of interest allows Council to deal with the conflict appropriately. Council endeavours to ensure that proponents are not disadvantaged by disclosing any conflicts of interest.

Maintaining Confidentiality

In the assessment of proposals, Council recognises that there is a need to keep some information provided by proponents confidential.

Council will rely on the information proponents provide that clearly identifies all the information for which proponents claim commercial in confidence or intellectual property protection. This information identified by proponents in their proposal will be kept confidential to the extent possible by law.

Proponents must be aware that Council and proponents are required to comply with legislation relating to making information publicly available. For example, Council and its contractors must comply with the requirements of the Government Information (Public Access) Act. Proponents should make themselves familiar with the circumstances under which Council can be legally compelled to make information publicly available before submitting a proposal to Council.

Where an unsolicited proposal includes intellectual property or commercial in confidence information, Council is able to design a competitive request for proposal process without having to rely on or publish the commercial in confidence or intellectual property of the original proponent. This means that maintenance of confidentiality of commercial in confidence or intellectual property information is not justification for Council not using a competitive, open-market process.

No improper advantage

Council will not engage in any practice that can give any proponents an unfair advantage over other proponents.

Risk Management

The risks of any proposed partnerships will be identified and taken into account to ensure that they are minimised or eliminated before contracts are entered into. Council will assess the risk of a proposal using its Hazard Identification and Risk Management process.

Maintaining Accountability and Transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the proposal process. Council must ensure that all activities are based on clear and defensible evaluation criteria consistent with our policy guidelines. Actions must be robust and defensible.

Accountability requires that both Council and proponents are held accountable for their actions and decisions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for decisions and the provision of appropriate information to relevant stakeholders including the community. Relevant summary information regarding proposals and possible outcomes from proposals will be made publicly available throughout the process. Council will determine what information is able to be made public in accordance with its policies and legislative requirements.

6.2 Unsolicited Proposals

Council is open to receiving unsolicited proposals that comply with the requirements of these Guidelines. Proponents should only submit unsolicited proposals for products or services that Council would not generally seek out for its normal operations. Council is particularly interested in proposals for unique or innovative products and services.

The unsolicited proposal process is not a substitute for routine, competitive procurement by Council. Should an unsolicited proposal be of interest to Byron Shire Council, then a competitive process may commence to seek proposals from the open market.

Any proponent wanting to supply routine goods and/or services to Council should compete via Council's usual procurement process. Proponents should register at www.tendersonline.com.au/byron to receive notification of opportunities to supply goods and/or services to Council.

6.3 Requirement for Competitive Processes

Council's Supporting Partnerships Policy states:

"Partnership arrangements can only arise through an open, market-based process, where everyone is given the opportunity to compete for the partnership opportunity."

These Guidelines detail the process that will be undertaken from receipt of an unsolicited proposal to the making of a decision by Council as to whether to proceed to a competitive process to seek proposals from the open-market for the goods or services to which the unsolicited proposal relates.

Council must be able to demonstrate to the community that it is obtaining best value from the use of its resources. Council is only able to do this by seeking proposals from the open market for the proposed goods or services.

It is only through seeking proposals from the open market that Council can demonstrate the uniqueness of a particular proposal.

It is recognised that outcomes of any resultant contract should be mutually beneficial for the proponent and Byron Shire Council.

Further, Council recognises the rights of proponents to derive benefit from unique ideas. The approach to identification, recognition and protection of intellectual property and commercial in confidence information is detailed in Part 8 of this document.

6.4 Approval Requirements

Neither the solicited or unsolicited proposal process replaces any applicable environmental, planning assessment or other approval requirements.

If Council decides to proceed to an open-market process for a product or service to which an unsolicited proposal relates, that must not be interpreted as any form of support for planning approvals or as a fetter on any of the discretionary powers and functions that Council exercises.

6.5 Assessment Process and Criteria

The following four stage process has been developed to guide the evaluation of unsolicited proposals:

Stage 1: Submission and preliminary assessment of unsolicited proposal;

Stage 2: Competitive process design

Stage 3: Competitive process

Stage 4: Contract negotiation and execution.

These stages are described in further detail in Section 8 of this Guide.

6.6 Keeping the Community Informed

Council maintains an Unsolicited Proposal Register on its website. It contains the following details:

- Brief description of unsolicited proposals received by Council and the date the proposal was received.
- Outcome of the initial evaluation of the proposal.
- Whether the proposal will proceed further.
- Final outcome of the process.

7 Guiding Principles of Submitting Proposals

7.1 Optimise Outcomes

By their nature, unsolicited proposals are unlikely to be a current focus of Council. In order for a proposal to be considered by Council the proposal must be consistent with the objectives of Byron Shire Community Strategic Plan. Proposed outcomes must always be in the best interest of the Byron Shire community as well as offer benefits to Byron Shire Council.

7.2 Uniqueness of Proposals

Proponents should only submit unsolicited proposals for products or services that Council would not generally seek out for its normal operations. Council is particularly interested in proposals for unique or innovative products and services.

Proponents should consider the following questions when determining if their proposal is unique:

- Is any other proponent potentially able to deliver the same or similar goods or services?
- Does the proponent own something (e.g., intellectual property, real property, or other unique assets) that make the proposal unique?
- Does the proposal include genuinely innovative ideas that are otherwise unlikely to be defined and put to market? For example, alternatives to providing a council service that constitutes a significant departure from traditional service delivery.

Types of proposals that are not considered unique include:

- Proponents seeking to directly purchase, lease, use or otherwise acquire a Council-owned or Council-managed property or asset.
- Proposals for significant extensions or variations to existing contracts, leases, or other arrangements on the basis that the contractor is already involved and has unique pre-existing knowledge or some other claimed advantage.
- Proposals that identify the proponent's skills or workforce capability as the only unique characteristic.
- Proposals to provide otherwise available goods or services to Council.
- Proposals whose claim to uniqueness is trivial e.g. a "unique" view from a particular site.

Council will not consider the following types of unsolicited proposals:

- Proponents with existing Council contracts or arrangements to provide goods or services seeking to bypass a future competitive process for those same goods or services.
- Proposals seeking to develop land that is not owned by (or vested to) Council or by the proponent.
- Proposals that do not contain a commercial proposition for Council.
- Proposals seeking only to change Council policy that have no associated project.
- Proposals to supply routine goods or services to Council.
- Proposals that are early concepts or lack detail.
- Proposals seeking grants, loans, bank guarantees or investment etc. from Council.
- Proposals seeking Council support for a "pilot" program.
- Proposals seeking to stop or suspend another Council process e.g. a compulsory acquisition.
- Proposals seeking an exclusive mandate, an exclusive opportunity or exclusive rights over a Council or community asset for a period of time so the Proponent can develop a feasibility study, "test something", or undertake similar activities.

Some practical examples of proposals that are NOT unique:

- A proponent has a product or service that is available elsewhere and they want to use an area of Council land to "trial" it in Byron Shire for a period of time. It may be innovative and bring new benefits to the Shire, but it is not a unique proposal because more than one proponent could deliver it and it seeks exclusive use of public land for what is a business venture. Council could instead run a competitive process to identify all potential start-ups who would like to compete for use of the public land to achieve the best value outcome for the community.
- A proponent has an innovative model to achieve Quadruple Bottom Line (QBL) outcomes in a particular service area (e.g. affordable housing or services to support vulnerable members of the community). The service model may be innovative, but there may be more than one provider who could achieve the same, or even better, QBL outcomes using other methodologies, so the

unsolicited proposal would not be unique.

- A proponent has an innovative product or service (e.g. a new software program or a new method of providing a service). If there are similar or alternative products or services available, then the proposal is not unique.

Whether Council assesses an unsolicited proposal as being unique or not, Council will run a competitive process to seek proposals. The only exception to this is if there is a Council resolution to the contrary. This is because the uniqueness of a proposal can only be openly and transparently demonstrated to the community through the results of a competitive process to seek proposals.

8 Protection of Intellectual Property and Commercial in Confidence Information

Council staff are bound by Council's Code of Conduct and must maintain the integrity and security of confidential documents and information provided by proponents. Council staff must:

- Protect confidential information;
- Only release confidential information if they have the authority to do so;
- Only use confidential information for the purpose it is intended to be used;

Council staff are also bound by Council's Business Ethics Policy and are not permitted to disclose confidential or proprietary information. Council has internal processes in place to ensure that proponents' information is not inappropriately disclosed.

If Council is legally bound to release commercial in confidence or intellectual property information then Council staff will always discuss this with the proponent prior to the release of the information.

9 Submitting and Assessing Unsolicited Proposals

Unsolicited proposals will initially be assessed against the assessment criteria listed in the table below. Proponents will need to submit ALL information requested in the Unsolicited Proposal Form for their proposal to be assessed.

The Unsolicited Proposal Form can be found on Council's website at www.byron.nsw.gov.au/Business/Doing-business-with-us/Partner-with-us..

The decision whether or not to proceed with any unsolicited proposal will be at Council's sole discretion and Council's decision will be final.

9.1 Submitting an Unsolicited Proposal

Proponents provide a written proposal to Council addressing the Unsolicited Proposal Form. Additional details and supporting information can be provided at the proponent's discretion.

Council staff will conduct an initial check to ensure that all requested information has been provided in sufficient detail to enable a preliminary assessment of the idea to be completed.

If the proponent has not provided the required information, they will be advised in writing that Council will not consider the proposal further at this stage and details of the missing information will be provided. The proponent may resubmit their proposal in the future with the additional information included.

If sufficient information has been provided, Council's internal working group will be convened to further assess the proposal as detailed in Section 9.2.

9.2 Assessing an Unsolicited Proposal

9.2.1 Value

Council will assess the value that a proposal offers against its potential to deliver environmental, social and economic outcomes for Council and the Byron Shire community.

The proposal should demonstrate that the project can deliver value to Council in a manner that is efficient, high quality, innovative and cost-effective whilst also have regard to the allocation, management and mitigation of risk.

When demonstrating the benefits of their proposal, proponents are advised to clearly state the key objectives of the proposal and what the proposal sets out to achieve in terms of environmental, social and/or economic outcomes. Any proposed benefits should be able to be clearly quantified using a robust methodology.

9.2.2 Assessment Criteria

Unsolicited proposals will initially be assessed against the criteria detailed below. Proponents should note that Council may use external experts to assist with assessment of proposals.

GOVERNANCE CONSIDERATIONS	
Alignment with Council objectives	<ul style="list-style-type: none"> • Is the proposal consistent with the objectives of Council's Community Strategic Plan? • Does the proposal meet Council's requirements for ethical and sustainable investment? What relevant certifications does the proponent have?
Quality of proposal	<ul style="list-style-type: none"> • Clearly stated objectives and outcomes • Achievable timetable • Community benefits offered • Adequate regard for approvals process if applicable
Capability and capacity	<ul style="list-style-type: none"> • Experience, capability and capacity of the proponent and any related parties.
Risk	<ul style="list-style-type: none"> • Overall risk profile of the proposal. • Demonstration of appropriate risk allocation and mitigation strategies.
Levels of Service	<ul style="list-style-type: none"> • Does the proposal improve or enhance an existing service? • Or does the proposal meet a new service or need in the community?
Financial considerations	<ul style="list-style-type: none"> • Will the proposal require an allocation of funds by Council? • What is the financial and commercial capacity of the proponent to deliver the proposal?
Planning Approvals	<ul style="list-style-type: none"> • Does the proposal require approvals such as environmental or planning? If so, is the proposal likely to achieve these approvals?

Resources	<ul style="list-style-type: none"> • How simple or complex is the proposal? • What level of resourcing is likely to be required by Council? • Is Council likely to be able to allocate appropriate resources to the project if it went ahead?
Probity	<ul style="list-style-type: none"> • Have any conflicts of interest of the proponent, Council staff or Councillors been identified? • Are there any other probity issues to be considered?
ENVIRONMENTAL CONSIDERATIONS	
Beneficial environmental outcomes	<ul style="list-style-type: none"> • Will the proposal deliver any of the following environmental outcomes: <ul style="list-style-type: none"> - Emissions reductions - Improved air quality - Waste reduction - Fauna management and conservation - Vegetation management and conservation - Water management - Feral species management and eradication - Preserving biodiversity - Energy generation • Will the proposal deliver any other beneficial environmental outcomes?
Other environmental considerations	<ul style="list-style-type: none"> • Environmental impact of the proposal.
SOCIAL OUTCOMES	
Beneficial social outcomes	<ul style="list-style-type: none"> • Will the proposal achieve any of the following social/community outcomes: <ul style="list-style-type: none"> - Improved community health and well-being - Opportunities for recreation and active living - Affordable housing - Reduce homelessness - Improve disability access and inclusion - Support social enterprise - Contribute to educational opportunities - Improve safety - Improve community connectedness - Access to cultural activities - Providing and maintaining community facilities - Preserving heritage assets - Urban design and planning for growth • Will the proposal deliver any other

	beneficial social outcomes?
ECONOMIC OUTCOMES	
	<ul style="list-style-type: none"> • Will the proposal achieve any of the following economic outcomes: <ul style="list-style-type: none"> - Direct economic benefits to the community - Indirect economic benefits to the community - Direct economic benefits to Byron Shire Council - Generation of employment opportunities with Byron Shire. - Advancement of existing or new industries within Byron Shire - Transport and trade links with other geographic centres • Will the proposal achieve any other economic outcomes for Byron Shire Council and/or its community?

9.3 Determination of Outcome

Following evaluation of the proposal, Council’s internal working group will make a recommendation to the General Manager about whether or not the proposal should proceed to the next stage. If the proposal involves matters that are beyond staff delegation, then the internal working group will report its recommendations to a meeting of Council and a resolution of Council will be required to determine whether the proposal will proceed or not.

9.4 Notification of Outcome

Following the assessment of an unsolicited proposal, the proponent will be notified in writing of the outcome. If Council wishes to progress to implementation of the proposal, a competitive, open-market request for proposal process will commence. The original proponent will be required to submit a detailed proposal in response to Council’s request for proposal.

10 Open Market Requests for Proposal

10.1 Formation of Project Team

Following a determination to proceed with the proposal, a project team will be formed. The project team will comprise of suitably qualified and experienced staff from across Council. A senior member of staff will be appointed as project sponsor to oversee the project.

A probity advisor will be engaged if high or extreme risks have been identified in the preliminary risk assessment, or if the project team otherwise determines it necessary.

If the project requires a high level of specialist knowledge that is not available within Council then an external specialist advisor will be engaged at this stage.

10.2 Design of Open Market Process

The type of competitive process to be used will depend on the nature and scale of the initial proposal and the outcomes likely to be generated. Major projects may require a Public Private Partnership and trigger statutory requirements affecting design of the competitive process. Other proposals may be much smaller in scale and only require a simple Expression of

Interest. Council staff will ensure that the type of competitive process used will be suitable taking into account the scale and risk of the project and meet any legislative requirements.

10.3 Conduct of the Open Market Process

Council will conduct the open market process in accordance with its policies, and guidelines and any relevant legislation.

All proposals will be assessed in accordance with the documents provided to the proponents. The same evaluation criteria will apply to all proponents.

The project team will assess all proposals received and make a recommendation as to which proposal offers Council the best overall value for money.

Depending on the nature of the project, the recommendation will be reported to a meeting of Council or a suitably delegated senior staff member for final endorsement and approval.

10.4 Contract Execution

Following final approval of the successful proposal, Council will enter into a contract with the successful proponent.

11 Flowchart of Key Stages in the Consideration of Proposals

UNSOLICITED PROPOSAL PROCESS				
	Processes	Decisions	Proponent Update	Community Engagement
STAGE 1 – UNSOLICITED PROPOSAL SUBMISSION AND PRELIMINARY ASSESSMENT	<ul style="list-style-type: none"> - Proponent submits unsolicited proposal to Council in accordance with Schedule of Information Requirements - Initial compliance check - Preliminary assessment - Check consistency with Community Strategic Plan. 		<p>Unsolicited Proposal Proponent advised of outcome with reasons for decision.</p>	<p>Unsolicited Proposal Register updated on receipt of proposal</p> <p>Unsolicited Proposal Register updated with outcome.</p>
STAGE 2 – DESIGN OPEN MARKET PROCESS TO SOLICIT COMPETITIVE PROPOSALS	<ul style="list-style-type: none"> - Council staff project team convened. - Detailed risk analysis completed. - Probity advisor engaged if required. - Specialist advisor(s) engaged if required - Procurement strategy developed - Workshop with elected Councils if required. 		<p>Unsolicited proposal proponent provided with progress update and advised when and where open market process will be advertised.</p>	<p>Community Engagement and Communications Plan prepared and initiated.</p>
STAGE 3 – CONDUCT OPEN MARKET PROCESS TO SOLICIT COMPETITIVE PROPOSALS	<ul style="list-style-type: none"> - Council staff run competitive process. Each project has unique requirements but the open market process will consist of at least the following: - public advertising for request for proposals - evaluation of proposals - recommendation to elected Council or GM (under delegation) whether to proceed and recommend successful proponent 	 	<p>Unsuccessful proponents advised of outcome with offer of debrief with Council staff if desired.</p>	<p>Outcome of open market process reported on Council's noticeboard and website</p>
STAGE 4 – CONTRACT FINALISATION	<ul style="list-style-type: none"> - Council staff finalise contract details with successful proponent. - Contract between Council and successful proponent is executed. 			<p>Unsolicited Proposal Register updated with final outcome of process.</p> <p>Contracts Register on Council's website updated with details of final contract.</p>